

CALIFORNIA ENERGY COMMISSION

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January 13, 2010

Mr. Gregory D. Skannal, HSSE Manager
Hydrogen Energy International LLC
One World Trade Center, Suite 1600
Long Beach, CA 90831-1600

**RE: HYDROGEN ENERGY CALIFORNIA PROJECT (08-AFC-8)
DATA REQUEST SET 2 (#s 133-152)**

DOCKET
08-AFC-8

DATE JAN 13 2010

REC'D JAN 13 2010

Dear Mr. Skannal:

Pursuant to Title 20, California Code of Regulations, Section 1716, the California Energy Commission staff seeks the information specified in the enclosed data requests. The information requested is necessary to: 1) more fully understand the project, 2) assess whether the facility will be constructed and operated in compliance with applicable regulations, 3) assess whether the project will result in significant environmental impacts, 4) assess whether the facilities will be constructed and operated in a safe, efficient and reliable manner, and 5) assess potential mitigation measures.

This set of data requests (#s 133-152) is being made in the areas of biology (#133 - 135), cultural resources (#136-143), land use (#s 144-149), public health (#150), socioeconomics (# 151), and traffic and transportation (#152). We would appreciate written responses to the enclosed data requests on or before February 13, 2010.

If you are unable to provide the specific information requested, need additional time, or object to providing requested/specific information, please send a written notice to Commissioner James Boyd, Vice Chair and Presiding Committee Member for the Hydrogen Energy California (HECA) project, and to me, within 20 days of receipt of this letter. If sent, this notification must contain the reason(s) for not providing the information, the need for additional time, and the grounds for any objections (see Title 20, California Code of Regulations, section 1716 (f)).

If you have any questions, please call me at (916) 654-5191 or email me at rjones@energy.state.ca.us.

Sincerely,

Original signed by:

Rod Jones
Project Manager

Enclosure
cc: Docket (08-AFC-8) and POS

Technical Area: Biological Resources

Author: Amy Golden

BACKGROUND

Generally, the proposed project site and the majority of the linear facilities would be located in agricultural areas. The Biological Resource Study Area that was surveyed in support of the Revised Application For Certification (AFC) covered a larger area which supports different habitat types, some of which provide more habitat value to common and rare plant and wildlife species than agricultural lands. According to the *July 2009 Supplement to the Revised AFC*, the proposed carbon dioxide, natural gas, and potable water pipeline linear facilities would be located predominantly in desert saltbush scrub. Staff needs to know the existing vegetation community types and acreages in order to quantify habitat loss for special-status species. Staff will then use these acreages to determine the appropriate habitat compensation amount in consultation with the applicant, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service.

DATA REQUEST

133. Please provide a vegetation community map for the Biological Resources Study Area shown on Figure 5.2-1 in the Revised AFC. If possible, please prepare this figure at a scale of approximately 1:2,000 feet on a current aerial photograph. The vegetation community map must show the project site, all project linear facilities, and the broader study area that was surveyed as part of the Biological Resources Study Area of the Revised AFC.
134. Please indicate the following items: a. whether each vegetation community is native or agricultural, b. baseline vegetation community acreage, c. post-project habitat acreages, impact type (permanent or temporary). For to the extent possible, please further characterize agricultural land use types by row or crop type and quantify acreages. Staff considers areas important that are identified as desert saltbush scrub where occurrences or sign of burrowing owl, western spadefoot toad (in intermittently ponded areas), blunt-nosed leopard lizard, San Joaquin kit fox, and other species have been found or have been indicated as a high likelihood of occurring; therefore, these areas should be highlighted in particular.

BACKGROUND

There are several waterways that occur within the project site and/or routes for linear facilities that may fall under the regulatory jurisdiction of the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act and/or California Department of Fish and Game under Section 1600 of the California Fish and Game Codes. These include, but are not limited to the following: California Aqueduct, Kern River, Kern River Flood Control Channel, West Side Canal, irrigation ditches, and several small swales and ephemeral washes. Staff needs a better understanding from the USACE on the jurisdictional status of the identified waters in order to assess project impacts to potentially jurisdictional waters of the U.S. Staff believes that waiting until the final linear facilities are determined to submit a letter of concurrence to the USACE on

the jurisdictional status of the identified waters could delay completion of staff analysis and project permitting.

DATA REQUEST

135. Please provide evidence of efforts to coordinate with the USACE on whether a formal wetland delineation and/or Jurisdictional Determination will be required for the potentially jurisdictional waters that were identified in the Revised AFC. Please provide copies of written correspondence between the applicant and the appropriate USACE office that give an indication of the status of the USACE Jurisdictional Determination process.

Technical Area: Cultural Resources

Author: Sarah M. Allred and Michael McGuirt

BACKGROUND

In the Archaeological Reconnaissance Report of the Revised AFC (May 2009), the Applicant's consultant has stated that the results of the Sacred Lands File search, as requested from the Native American Heritage Commission (NAHC) on four different occasions, resulted in negative findings. However, the February 13, 2009 response letter from the NAHC (included in Appendix B of the technical report) clearly states, "*The Sacred Lands File search did indicate the presence of Native American cultural resources in some of the project areas (APE) submitted in the search request*" (emphasis theirs). Staff needs to determine whether or not sensitive cultural resources have been considered and accounted for in terms of project effects.

DATA REQUEST

136. As the Feb. 13th letter states the SLF search results are positive, please conduct the necessary research to reconcile this discrepancy. Please describe any known cultural resources identified by the NAHC's Sacred Lands File search and provide copies of any records and maps of these resources. In addition, please indicate whether or not the resources have been evaluated for the California Register of Historic Places (CRHP).

BACKGROUND

The area of the proposed project in which all disturbances to cultural resources may potentially occur (referred to by the applicant as 'Area of Potential Effect' or 'APE') is described as the 473-acre project site, as well as all offsite facilities, including the electrical transmission line, natural gas supply line, water supply lines, and carbon dioxide pipeline. It appears, however, that the 628-acre 'Control Area' has been excluded as a part of the project and is not part of the 'APE' description. Under CEQA (Pub. Resources Code, § 21065; Cal. Code Regs. tit. 14, §15378), "any activity which may cause either a direct or indirect physical change in the environment or which has the potential to result in either direct or reasonably foreseeable indirect physical change" should be included as part of the project. While the applicant indicates that no construction is planned in the Control Area, the land has been optioned for purchase by the applicant and is proposed to be held and controlled by the applicant as a part of the project. Staff needs to be able to determine all reasonably foreseeable effects to cultural resources related to the project.

DATA REQUEST

137. Please indicate whether or not there are any future plans or future potential for ground-disturbing activities (e.g., parking, trenching, grading, disking, etc.) to occur within the limits of the Control Area. Would a fence be installed along the perimeter of this area? What use restrictions, if any, does the applicant plan to impose for the Control Area?

BACKGROUND

The Archaeological Reconnaissance Report (May, 2009) indicates that site P-15-171 could not be relocated during cultural resources field survey efforts (p. H3-39); however, the mapping submitted in response to Data Request 64 (Figure 64, sheet 2) indicates that the area in which site P-15-171 is plotted has not yet been surveyed. Staff needs to verify which portions of the project area have been subject to pedestrian cultural resources survey.

DATA REQUEST

138. Please clarify the apparent discrepancy regarding site P-15-171 and verify whether or not all portions of the “no cultural survey” areas of Figure 64 have been subject to pedestrian survey.

BACKGROUND

In Table 2-1 (Project Disturbed Acreage) of the May, 2009 Revised AFC, the construction Right-of-Way (ROW) for the electrical transmission line is listed as being 175 feet wide, which is stated to be the maximum width required in areas where the structures will be installed. However, when calculating the area of disturbance along the transmission line, the 150-foot permanent ROW width has been used instead. Since 175 feet is the stated maximum area of potential physical disturbance required for construction, it would appear that the 175-foot value should be used, instead of the 150-foot value, to calculate the area of disturbance for the 60 structures. In other words, it appears the total disturbance would be calculated as 175-foot x 175-foot area for each of the 60 structures for a total acreage of 42.1 acres. Staff would like to verify the width of the construction ROW for the transmission line structures and verify whether or not a 50-foot buffer, as required by the Energy Commission, was surveyed for cultural resources on either side of the construction ROW limits.

DATA REQUESTS

139. Please explain why the 150-foot value was used, instead of 175 feet, in calculating the area of disturbance in Table 2-1 for the transmission line structures.
140. Please confirm whether or not an Energy Commission 50-foot buffer was surveyed on either side of the 175-foot construction ROW for the transmission line structures.
141. If the 50-foot buffer has not been surveyed, please conduct the surveys and present the results to Energy Commission staff.

BACKGROUND

On Figure 64, which was submitted in response to Data Request 64, the legend indicates that construction ROW is depicted by a dashed line. It is unclear whether or not this dashed line also encompasses the Energy Commission 50-foot buffer on either side of the construction ROW. Staff needs this information in order to determine which

areas have been subjected to pedestrian cultural resource survey, as well as to distinguish between survey areas and construction rights of way.

DATA REQUEST

142. Please revise Figure 64 to show the construction ROW, as well as the Energy Commission 50-foot buffer to either side of the construction ROW, for the linear facilities.

BACKGROUND

The applicant has objected to Data Requests 78 and 79. Although staff would not agree with the applicant's perspective that Data Requests 78 and 79 are overly burdensome or not reasonably possible, staff appreciates the applicant's willingness to work toward an approach agreeable to both parties. Staff needs to be able to establish a factual basis for the assessment of potential effects to buried deposits within the project limits. In the absence of such information, to appropriately configure the cultural resources monitoring for this project, staff may need to recommend conditions of certification providing that a subsurface study, such as was requested in Data Requests 78 and 79, be conducted post-certification and pre-construction.

DATA REQUEST

143. Staff respectfully requests that, in addition to completing Data Request 77, the applicant consider conducting a field mapping effort that would conform with Subpart A of Data Request 78, and then, on the basis of the results of Data Request 77 and Subpart A of Data Request 78, the applicant and staff would consult at the next Data Request workshop on the need to conduct a subsurface geoarchaeological investigation.

Technical Area: Land Use

Author: Amanda Stennick

BACKGROUND

The applicant has stated in the Revised AFC (Table 5.4-5 and Appendix W), that the 473-acre project site is currently under a Williamson Act contract. For staff to completely evaluate the proposed project the following information is necessary.

DATA REQUEST

144. Please submit Kern County's proposed schedule for cancellation of the Williamson Act contract for the 473 acres.

BACKGROUND

Hydrogen Energy International, LLC (HEI) is also acquiring an additional 628 acres of land adjacent to the 473-acre project site, referred to as "Controlled Area" (Figure 2-4 in the Revised AFC). The 628 acres encompass Assessor's Parcel Numbers 159-040-02, 159-040-04, 159-040-11, 159-040-16 [part], 159-040-18 [part], and 159-190-09. HEI states that it will own this property and have control over public access and future land use.

DATA REQUEST

145. Please state how the 628 acres will be used as part of the proposed project.
146. Please state whether the 628 acres (or a portion thereof) are under a Williamson Act contract. If yes, please provide the information on the 628 acres as described in data request #135.

BACKGROUND

As stated in the AFC, HEI will obtain a lot line adjustment to merge the 473-acre project site (a portion of two legal parcels, Assessor's Parcel Numbers 159-040-16 [part] and 159-040-18 [part]), into one legal parcel and merge the remainder of Assessor's Parcel Number 159-040-16, which would be excluded from the project site into Assessor's Parcel Number 159-040-020.

DATA REQUEST

147. Please clarify whether a typographic error was made and APNs 159-040-020 and 159-040-02 are the same parcel.
148. Please provide Kern County's schedule for processing the lot line adjustment applications.
149. When available, please provide Energy Commission staff with a copy of the final recorded documents for the lot line adjustments.

Technical Area: Public Health**Author:** Dr. Alvin Greenberg**BACKGROUND**

Petroleum (pet) coke and coal are some of the most impure of fuels. Their impurities range from trace quantities of many metals, including uranium, thorium, and polonium, to much larger quantities of aluminum and iron to still larger quantities of impurities such as sulfur. The Application For Certification addresses the potential emissions of many substances released from the gasification of pet coke and coal but has not discussed the potential emissions of radioisotopes. Staff needs this information in order to fully address the potential for all impacts on public health.

DATA REQUEST

150. Please provide the identity of and emission factors for all radioisotopes that are potentially released when pet coke and coal are gasified.

Technical Area: Socioeconomics

Author: Scott Debauche

Background

AFC Section 5.8 (Socioeconomics), page 5.8-15, states:

The nearest hospitals to the HECA project site are Mercy Southwest and HealthSouth Bakersfield, located approximately 21 miles northeast and 25 miles east of the site, respectively.

Due to the remote location of the proposed project site and based on these distances to the nearest available hospital facilities serving the HECA site, for the Socioeconomics Staff Assessment, Energy Commission staff needs additional information regarding the applicant's plans for first response emergency care during both project construction and operation. This information is required for staff to accurately assess impacts required by California Environmental Quality Act (CEQA) for the proposed project to maintain acceptable service ratios, response times, and other performance objectives for emergency medical providers serving the HECA site.

DATA REQUEST

151. Please provide information on the applicant's protocol for on-site first responder emergency medical care during both project construction and operation.

Technical Area: Traffic and Transportation
Author: Scott Debauche

BACKGROUND

Title 14, Code of Federal Regulations, APrt 77.13 (2)(i) requires an Applicant to notify the Federal Aviation Administration (FAA) of the construction of structures with a height greater than 200 feet from grade. HECA AFC Section 5.10 (Transportation and Circulation), page 5.10-25, states:

The project's tallest structure is the carbon dioxide vent at 260 feet.

Energy Commission staff needs information regarding the applicant's completion of FAA Form 7460 and an applicant secured FAA Determination of No Hazard to Navigable Airspace. At the time staff has not been provided with a completed FAA Form 7460 or an applicant secured FAA Determination of No Hazard to Navigable Airspace. Therefore, staff cannot make a determination regarding LORS conformance with FAA requirements or the potential for project impacts related to the height of this structure and its location in navigable airspace. This information is necessary for staff's analysis.

DATA REQUEST

152. Please provide information on the applicant's status of a completion of the FAA 7460 requirements and attainment of an FAA Determination of No Hazard to Navigable Airspace.



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *HYDROGEN ENERGY*
*CALIFORNIA PROJECT***

Docket No. 08-AFC-8

PROOF OF SERVICE LIST
(Rev. 9/3/09)

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DECLARATION OF SERVICE

I, April Albright, declare that on January 13, 2010, I served and filed copies of the attached Hydrogen Energy California Project (08-AFC 8) Data Requests Set 2 (#s 133-152), dated January 13, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[www.energy.ca.gov/sitingcases/hydrogen_energy].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

✓ sent electronically to all email addresses on the Proof of Service list;

✓ by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

✓ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Original signed by: _____
April Albright